

January 31, 2003

Denise L. Desautels, Esquire, Hearing Officer  
Energy Facilities Siting Board  
One South Station  
Boston, Massachusetts 02110

Re: The Berkshire Gas Company - EFSB 02-RM-2

Dear Ms. Desautels:

The Berkshire Gas Company ("Berkshire" or the "Company") hereby submits its comments in response to the Final Order Opening Rulemaking (the "Order") in this proceeding dated December 20, 2002. Berkshire appreciates the efforts of the Energy Facilities Siting Board to streamline and clarify its requirements and policies with respect to facilities subject to the Siting Board's review pursuant to G. L. c. 164, §69J. As a general matter, Berkshire appreciates the efforts of the Siting Board and the Department of Telecommunications to coordinate the review of energy facilities and, through their decisions, establish clear policy and procedures. The coordinated review of the Company's recent filing in The Berkshire Gas Company, EFSB 99-2/D.T.E. 99-17 (1999) enabled the Company to complete a facility necessary to provide reliable service on a timely basis. Berkshire will limit its comments to only several concerns with respect to proposed 980 CMR §15.00.

First, as a general matter, proposed 980 CMR § 15.00 codifies in a comprehensive manner many of the procedural and substantive requirements that the Siting Board has adopted over time. Berkshire believes that future petitioners will benefit from the ongoing effort to clarify and modernize the Siting Board's regulations.

Second, with respect to the proposed clarification of the definition of jurisdictional transmission pipelines, the Company has several concerns. Proposed section 980 CMR §15.01(2) seeks to articulate which facilities are subject to Siting Board review with what seems to be an intention to provide greater certainty to the industry. The Company appreciates this effort, but is concerned that the proposed provision will result in excessive and unnecessary review of minor facilities not likely to be intended to be covered within the jurisdictional statute. Thus, the requirement would add substantial costs without providing customers any meaningful benefit by such added regulatory scrutiny and may result in otherwise beneficial projects not being pursued because of the substantial costs associated with a Siting Board proceeding. The Company believes this concern is greater in more rural areas such as Berkshire's service territory.

The proposed definition also seeks to cover situations of "pipeline segmentation." The Company believes that the proposed treatment of segmented pipelines is generally a reasonable approach and avoids the difficulties with analyzing issues of intent. The Company would, however, recommend a minor modification to the proposed regulation. The Company notes that a pipeline of sufficient pressure of just under a mile in length might be located in the vicinity of, for example, a customer that, within the stated five-year period, requests that the Company extend the previously constructed facility. The Company may have had no intention to ever extend the original line, but the later extension causes the aggregate facilities to exceed one mile in length. The result is a protracted regulatory proceeding for an insignificant facility. The Company encourages the Siting Board to consider a modification to the aggregation standard such that not only must the latter facility cause the aggregated pipeline to exceed the jurisdictional length standard, but, also, the latter facility must satisfy some minimum length requirement, for example 2,500 linear feet. Alternatively, a sliding standard for time and length of the additional components of the aggregated facility might be adopted.

In addition, the proposed application of the definition of "normal operating pressure" to define jurisdiction relies, in turn, upon the definition of "MAOP," or the maximum operating pressure for a particular facility. This proposed definition will add a measure of clarity, but will, more significantly, create inefficiencies. Under current practices, where "potential" MAOP does not affect the question of jurisdiction, Berkshire and, presumably, other local distribution companies, may perform testing of pipeline facilities to establish a record for any future request to increase the operating pressure of the facility. This testing typically costs very little and affords the Company substantial operational flexibility in the future. The proposed definition will deter companies from this least cost operational strategy to the substantial detriment to customers. The Company believes the better approach is to require relevant approvals if the utility ever seeks to operate a particular facility at a higher pressure.

Third, the Company enthusiastically supports the added flexibility associated with the proposed ability to seek approval for route variations within a petition to the Siting Board. Petitioners may seek approval of multiple variations for limited segments of linear facilities. Any notice in such a proceeding could clearly identify this type of proposal. Berkshire notes that its own experience with pipeline facilities has demonstrated that, at times, certain areas of concern may be traversed by comparable alternative routes. In addition, it may not be possible to ascertain the full extent of a construction or environmental concern until construction crews are in the field. The proposed flexibility will provide greater flexibility so that projects may be completed at lower costs and with less impact upon the environment.

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Fourth, the Company would propose a minor revision to 980 CMR §15.04 (1)(b) relating to notice requirements. The proposed regulations add a requirement of sending a notice to all abutters of a project and abutters to abutters within 300 feet of a project. This language appears drawn from G.L. c. 40A, § 3 regarding zoning matters. The proposed regulation also enables the "Presiding Officer" to require an alternative form of notice. The Company expects that it will, as a practical matter, be unlikely that a Presiding Officer will ever limit the codified notice requirement. Berkshire believes that notice matters should be left wholly to the discretion of the Presiding Officer in terms of assessing the extent of appropriate notice. In some projects, particularly in more urban areas, the 300 foot requirement could add substantial costs in complying with notice requirements without providing any meaningful benefits to the public. Of course, the Presiding Officer would be required to apply the chapter 40A requirement for any consolidated proceeding involving a zoning exemption.

Again, Berkshire appreciates the opportunity to comment in this proceeding. The Company appreciates the Siting Board's efforts to update its regulations. Please address all correspondence on this matter to me as well as the Company's counsel, James M. Avery, Esq., Brown Rudnick Berlack Israels LLP, One Financial Center, Boston, Massachusetts 02111.

Thank you for your consideration.

Very truly yours,

Richard E. Nasman  
Director of Operations

cc: Peter Ray, EFSB  
James M. Avery, Esq.

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